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Conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

12 Cr. 876 (VSB)

5 PAUL CEGLIA,

6 Defendant.

7 -----x

8 New York, New York

9 March 10, 2015

11:15 a.m.

10 Before:

11 HON. VERNON S. BRODERICK,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

17 BY: JANIS ECHENBERG

NIKETH V. VELAMoor

Assistant United States Attorneys

18 LAW OFFICE OF ROBERT ROSS FOGG LLM

19 Attorneys for Defendant

20 BY: ROBERT R. FOGG (Via telephone)

21 MESSINA LAW FIRM, P.C.

Attorneys for Defendant

22 BY: GIL D. MESSINA (Via telephone)

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1 (In open court)

2 (Case called)

3 MS. ECHENBERG: Good morning, your Honor. Janis
4 Echenberg and Nick Velamoor for the government.

5 THE COURT: Good morning. On the phone who do we
6 have?

7 MR. FOGG: Robert Fogg, your Honor.

8 MR. MESSINA: Gill Messina, your Honor.

9 THE COURT: Mr. Fogg, Mr. Messina, if at any point in
10 time you can't hear me just let me know.

11 MR. MESSINA: OK.

12 MR. FOGG: Will do.

13 THE COURT: I had called this conference after being
14 notified that Mr. Ceglia had circumvented his electronic
15 monitoring ankle bracelet and that he appears to have vacated
16 his home.

17 Initially, Ms. Echenberg, I want to just confirm, is
18 that correct? And just what information are you able to
19 provide with regard to that.

20 MS. ECHENBERG: That is correct, your Honor. The
21 defendant has not responded to several attempts by his pretrial
22 services officer to contact him. He is not in his home. He is
23 not with his electronic bracelet. That has been located and
24 retrieved by pretrial services. And your Honor ordered him to
25 appear today. Obviously he is not here as well.

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1 THE COURT: Yes. Thank you.

2 Yesterday, having been informed that this might be an
3 issue, I scheduled a conference today and directed that the
4 defendant appear.

5 Let me ask this, Mr. Fogg: Have you had any contact
6 with Mr. Ceglia in the past day or so?

7 MR. FOGG: No, I haven't, your Honor.

8 THE COURT: Mr. Messina, have you had any contact with
9 Mr. Ceglia in the past day or so?

10 MR. MESSINA: I have not, your Honor.

11 THE COURT: Mr. Fogg, when was the last time you had
12 contact with Mr. Ceglia?

13 MR. FOGG: I would probably say it would be through
14 e-mail, Judge, not through phone.

15 THE COURT: Sorry? Did you say through e-mail?

16 MR. FOGG: Yes. It would have been through e-mail.

17 THE COURT: OK. When was that?

18 MR. FOGG: That would be approximately a week and a
19 half, when we were going through the dance with the subpoena
20 and not having a response from him for that.

21 THE COURT: OK. Mr. Messina, the same question: When
22 was the last contact you had with Mr. Ceglia?

23 MR. MESSINA: The last contact I had was indirectly,
24 your Honor. I believe it was last Thursday when I was cced on
25 an e-mail that Mr. Ceglia sent.

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1 THE COURT: OK.

2 Have counsel attempted to reach out to Mr. Ceglia and
3 basically not received a response?

4 Mr. Fogg?

5 MR. FOGG: Yes, your Honor. I have three modes of
6 contact. One is by U.S. mail directed to the house, which I
7 have not done only because of the shortness of time. The other
8 one is a phone number, which is his cell phone, which I have
9 reached out and received no response; also sent a text using
10 the cell phone. And the other is by one e-mail account that I
11 have used, and I have not received a response.

12 THE COURT: Mr. Messina, the same question: Have you
13 reached out to Mr. Ceglia?

14 MR. MESSINA: All of the attempts to reach him by
15 phone have been made by Mr. Fogg. I have not called his cell
16 phone, but I have e-mailed him, and when we received the notice
17 yesterday of this conference ordering him to be in court, I
18 thought it appropriate that I follow up with an e-mail telling
19 him that he needs to be in court and if he got the e-mail to
20 contact Mr. Fogg or myself. I have had no response.

21 THE COURT: OK.

22 In light of Mr. Ceglia's removal of the ankle bracelet
23 and in light of the fact he has not maintained contact with
24 pretrial services or his counsel, does the government have an
25 application?

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1 MS. ECHENBERG: Yes, your Honor. The government moves
2 to revoke his bail.

3 THE COURT: OK. I will grant that application to
4 revoke Mr. Ceglia's bail. To the extent there are further
5 proceedings with regard to -- let me actually ask these
6 questions about the bond. As I understand it, the bond was for
7 \$250,000 secured by various parcels of real property, that that
8 bond was amended on consent around September 5 of last year.
9 Because the properties, as I understand it, had an equity value
10 in excess of \$250,000, the security was reduced so that it
11 would at least be \$250,000 worth of equity in the properties
12 but no less.

13 Ms. Echenberg, is that an accurate statement.

14 MS. ECHENBERG: Yes, your Honor. The defendant
15 requested that certain of the profits be released so that he
16 could retain counsel.

17 THE COURT: Yes.

18 MS. ECHENBERG: He had previously been represented by
19 the federal defenders, and he asked that that those properties
20 be released because they did exceed the value of the bond so
21 that he could use that money to secure the counsel that he now
22 has.

23 THE COURT: OK. As I understand it, Mr. Fogg, I
24 believe you were present at the conference before Judge Carter
25 when this was discussed on September 5, is that accurate?

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1 MR. FOGG: If I am not mistaken I think it was
2 September 6. I am not too sure, but I was present.

3 THE COURT: Let me see. I'm sorry. It looks like the
4 date it was discussed was September 15 where the bail was
5 modified.

6 MR. FOGG: That would be subsequent to my appearance,
7 and that was through discussions with the government and the
8 PD's office to verify and confirm the value, and it was later
9 amended, Judge.

10 THE COURT: Let me ask this, Mr. Fogg: I know that
11 certain properties were released. I take it that those
12 properties were monetized in some way. Do you know anything
13 about that?

14 MR. FOGG: Were those properties monetized? No,
15 Judge. I do know that the properties that were being secured,
16 some of the properties were taken off the list as secured. The
17 remaining property was left on the bond, which was to be in the
18 amount of the bond, which was \$250,000. That's my
19 understanding. But my direct involvement in that wasn't -- I
20 wasn't directly involved with that at that point.

21 THE COURT: OK.

22 MR. FOGG: It was still the PD's office and
23 Mr. Ceglia.

24 THE COURT: Rather than getting into the details, this
25 is the issue that I have, and it's something that I will ask

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1 actually the government as they're going through various
2 matters to look into.

3 The request to remove the properties from his bail,
4 obviously he retained counsel and my interest is sort of
5 whether or not to the extent it appears he has fled and to the
6 extent that that is the case whether basically his request to
7 have those properties removed, whether that was part of his
8 plan all along.

9 In other words, I would like to know whether some of
10 that money that was freed up to retain counsel, whether there
11 was money left over that basically he may be using in
12 connection with his flight.

13 I'm trying to determine at what point in time he may
14 have made the determination to flee, because it is not
15 something that that's easy to do, my understanding, to tamper
16 with an ankle bracelet, so it's something that seems like took
17 a fair amount of planning.

18 There are several things that we have outstanding that
19 I would like to discuss with the parties at this stage.

20 Let me ask this: Mr. Fogg, Mr. Messina, do you have
21 anything you would like to inform me about before I move on to
22 the next issues I would like to discuss, which will be the
23 amended protective order, the issue related to Paul Argentieri,
24 the Facebook subpoena, and issues related to the crime fraud
25 exception.

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1 Before we discuss the crime fraud exception, I will
2 say this, I do not want to discuss any substantive information
3 with regard to that. It's really questions about timing that I
4 would like to discuss.

5 Before we get there, Mr. Fogg, Mr. Messina, do you
6 have anything you would like to discuss?

7 MR. MESSINA: All I was going to say, I am away. I
8 came south for a family wedding, and the first notification I
9 received of this was right after I guess Ms. Echenberg had
10 called Mr. Fogg and then he called me I guess late on Sunday
11 night to advise me of this.

12 We don't know the status of the properties although
13 we're trying to find that out. So there's nothing that I can
14 add to what your Honor already knows. I wasn't involved in
15 that process. I came on the case after Mr. Fogg, so there is
16 nothing that I can add that would be helpful to the Court.

17 THE COURT: Mr. Fogg?

18 MR. FOGG: Your Honor, of course, I can't state as to
19 what his state of mind was or is. I don't know.

20 THE COURT: Yes.

21 MR. FOGG: Whether or not there was a plan from the
22 beginning when I was first retained, of course, I don't know
23 that. But I can say that the property that was released
24 remained in his possession, under his control, and that at one
25 time I did go down to visit him, and that was still the fact.

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1 It's my understanding -- of course, I don't have a direct
2 knowledge of this, it is my understanding even as of last month
3 the properties weren't able to be sold based on the I guess the
4 financial climate down there and I guess the fact of his case,
5 and I guess it's that's problem there with regard to the
6 property.

7 THE COURT: OK.

8 MR. FOGG: My understanding is the properties are
9 still intact. That's my understanding, but I don't have
10 personal knowledge of that.

11 THE COURT: I didn't by my questions -- and it was
12 really for the government as they look into this -- I didn't
13 mean to suggest either, Mr. Fogg or Mr. Messina, that you had
14 any knowledge about what Mr. Ceglia may or may not have been
15 planning. If it came across that way, I apologize. I was not
16 suggesting that that at all.

17 MR. FOGG: I didn't take it that way, your Honor.

18 THE COURT: With regard to the amended protective
19 order, as I understand it, and I don't believe there is anyone
20 from Facebook who is here today, but as I understand it, Mr.
21 Fogg, Mr. Messina, I believe, and Facebook signed off on the
22 amendment to the protective order.

23 Is that accurate?

24 MR. FOGG: We have not signed off yet, but we intend
25 to do that without complication or problem. I believe what

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1 will happen is that Mr. Messina will sign off, print it up,
2 sign it off, and somehow scan it to me. I will then sign it
3 and then scan it to the Court and cc Facebook.

4 THE COURT: OK.

5 MR. MESSINA: If I can interject, your Honor.

6 THE COURT: Yes.

7 MR. MESSINA: As I said, I am out of state. I was
8 able to sign, scan, and e-mail it to Mr. Fogg yesterday, but
9 he's been tied up in court, so he's probably not aware that he
10 has it, which led to my e-mail to the Court yesterday I believe
11 saying that he will be signing, and he has my signature and, he
12 will sign and scan it and send it to the Court as well as to
13 the U.S. Attorney's Office and to Gibson Dunn.

14 THE COURT: OK. I wanted to make sure that that was
15 in process. I take it, as I understood it, the government has
16 no objection to the protective order.

17 MS. ECHENBERG: That's correct, your Honor.

18 THE COURT: OK. Great. So we'll get that in place in
19 the next few days. Now, I will hear from the parties with
20 regard to my order related to Mr. Argentieri -- I'm not sure if
21 I'm pronouncing his name correctly, if I am mispronouncing it,
22 I apologize. I specifically directed that the parties submit
23 letters to me by March 12 concerning whether either party had
24 an intention of call Mr. Argentieri as a witness and also
25 whether or not any other current or former clients of either

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1 Mr. Fogg or Mr. Messina who may have been represented in
2 matters related to this case. In light of the current
3 situation, I will hear from the parties and get their views
4 about that current deadline. First I will hear from the
5 government.

6 MS. ECHENBERG: Your Honor, we would like to still
7 move forward on this issue and all issues related to the case
8 to the extent it makes sense as we continue to look for
9 Mr. Ceglia. It would be helpful if we could have another day,
10 possibly until Monday, because obviously other things have
11 taken precedence over the last 48 hours.

12 THE COURT: Sure.

13 MS. ECHENBERG: But we would like to move forward on
14 that issue.

15 THE COURT: OK. Mr. Fogg, Mr. Messina?

16 MR. MESSINA: This is Mr. Messina, your Honor. I
17 didn't hear all that Ms. Echenberg said, but it sounded like
18 she wanted a few more days to respond, is that correct?

19 THE COURT: Correct.

20 What I was going to do is give the parties until
21 Monday to provide me with letters relating to Mr. Argentieri or
22 any other individuals who may have been represented by either
23 yourself or Mr. Fogg in matters relating to the criminal case.

24 MR. MESSINA: So that the Court and the government
25 knows, I believe the only -- of course, Mr. Fogg can speak for

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1 himself, but the only client involved in any of these
2 proceedings of his is Paul Ceglia.

3 I, of course, represent Mr. Ceglia in the civil action
4 pending in the Supreme Court in New York County; I represent
5 Mr. Argentieri. So those are the only two individuals involved
6 in the universe of litigation that I represent. I will tell
7 the Court now that we have no current intention of calling
8 Mr. Argentieri as a witness in the criminal case.

9 THE COURT: OK.

10 MR. FOGG: Your Honor?

11 THE COURT: Yes.

12 MR. FOGG: If I may?

13 THE COURT: Yes.

14 MR. FOGG: Of course, we all recognize that the
15 defense does not have to put on a defense or present evidence.

16 THE COURT: Absolutely. Yes.

17 MR. FOGG: We have not broached that issue just yet.

18 THE COURT: Yes.

19 MR. FOGG: However, I would join with Mr. Messina with
20 regard to the intention to call Mr. Argentieri. However,
21 seeing that things are I guess very flexible and moving at the
22 present time and very fluid, I would like to at least reserve a
23 possible decision on that.

24 THE COURT: In fact, as a matter of process, Mr. Fogg,
25 Mr. Messina, obviously I just wanted to know current intentions

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1 at this stage and obviously that could change. If Mr. Ceglia
2 either turns himself in or is apprehended and we proceed with
3 the case in the future, obviously you can make a decision about
4 who to call.

5 The issue that I was trying to surface is potential
6 conflicts and whether or not it was going to need to have a
7 Curcio hearing. Obviously, I heard Ms. Echenberg indicate that
8 the government would like to proceed as much as possible on
9 matters relating to the criminal case. There is a limit to
10 that obviously because the defendant is entitled to be present
11 at various points of his prosecution. I don't know and I
12 haven't researched the extent to which or what types of actions
13 can be taken in the defendant's absence.

14 I think legal matters like we have discussed, like the
15 letters the initial letter that we have discussed are probably
16 appropriate. I do think, though, obviously we couldn't hold a
17 Curcio hearing and there are certain things that we would be
18 required to have him here for.

19 I think with regard to at least the letters, I will
20 extend the time to Monday to get the letters. Mr. Fogg,
21 Mr. Messina, if you could submit a short note just confirming
22 what you have indicated today with the understanding that the
23 defendant obviously need not put on any defense and that it
24 could change, but I just want to get what the current state of
25 affairs is.

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1 MR. MESSINA: Understood. Thank you, your Honor.

2 MR. FOGG: Thank you, your Honor.

3 THE COURT: Sure. With regard to the next issue,
4 which is the subpoenas to Facebook and to Mr. Zuckerberg, have
5 any documents been produced in connection with those subpoenas?

6 MR. MESSINA: Not to the defense, your Honor.

7 THE COURT: This is what my intention is and then I
8 will hear from the parties.

9 In light of the fact and we will have the protective
10 order in place fairly soon, but in light of the fact that the
11 defendant is not available even to review these documents that
12 the documents, as the parties know, get into a place where we
13 have the protective order that it was highly contested, my
14 current intention is to notify Facebook and Mr. Zuckerberg that
15 they should have the documents collected, ready to be produced,
16 but that production be held in abeyance until such time as
17 Mr. Ceglia is apprehended or turns himself in.

18 So first I will hear from Mr. Fogg and Mr. Messina on
19 that.

20 MR. FOGG: Judge, that sounds fair. However, if in
21 fact he is returned or he is somehow apprehended three days
22 before the trial that would be very problematic for me.

23 THE COURT: No. Let me say, and I should have stated
24 this at the outset, currently I am not moving the trial date.
25 We are going to keep the trial date. I am I guess cautiously

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1 optimistic that he will return to the jurisdiction in the near
2 future. So we will maintain the current dates which I think is
3 April 1 is the motions in limine. I will hear from the
4 parties. I will ask for a status update from the parties and
5 the parties' views by the end of next week.

6 Mrs. Williams, the end of next week, Friday?

7 THE DEPUTY CLERK: March 20.

8 THE COURT: So by March 20 I will hear from the
9 parties concerning the status and their views with regard to
10 the dates that are outstanding and principally the motions in
11 limine and the trial date. But at this stage I'm not going to
12 move the trial date.

13 Mr. Fogg, I understand what you are saying, and
14 obviously I will take that into consideration if this situation
15 persists and there does become a need to move the trial date,
16 but I will give you sufficient time to review the documents
17 that are produced in advance of any trial here. OK?

18 MR. FOGG: Your Honor, thank you very much. Just to
19 be clear, Judge, I did not ask for a trial date here to be
20 somehow altered, changed, or moved back and forth. That wasn't
21 my concern. My concern was, as you have just last stated,
22 getting those documents in advance so that I can be prepared.
23 I just want to be ready. That's it.

24 THE COURT: Yes.

25 MR. FOGG: I'm ready to review it with or without

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1 Mr. Ceglia. That is the intention of Mr. Messina and I no
2 matter what. I just thank the Court for consideration on that
3 timing issue.

4 MR. MESSINA: If I may interject something, your
5 Honor.

6 THE COURT: Yes.

7 MR. MESSINA: I propose this perhaps as a potential
8 compromise, although I don't intend to compromise with the
9 Court on this order, but as a possible alternative, if those
10 documents could be produced perhaps at the U.S. Attorney's
11 Office, and Mr. Fogg and I could just have an opportunity to
12 review them there and not copy them or take them or have them
13 produced to Mr. Fogg's office as the subpoena says, I think
14 that would alleviate a lot of concerns that we have.

15 We will, of course, be subject to the protective order
16 and nothing will be disclosed, of course, but at least that
17 would afford us some comfort that we have an idea about what
18 may be there in terms of, you know, other contracts or contract
19 formulations and that sort of thing.

20 THE COURT: OK.

21 MR. FOGG: Or it could be produced to the Court.

22 THE COURT: Probably, for ease of review, it would
23 probably be easier at the U.S. Attorney's Office rather than
24 have you sitting in my chambers reviewing them. Let me ask
25 this, because it does raise an issue that is a matter of

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1 concern to me. That relates to Mr. Argentieri. The subpoenas
2 were subpoenas that were issued in this case, in the criminal
3 case. They have nothing to do with the civil case.

4 Mr. Argentieri, at least according to the press reports, was
5 talking about these subpoenas as if he was going to get those
6 documents.

7 I know that, Mr. Messina and Mr. Fogg, you indicated
8 that neither of you were involved in that. But it raises an
9 issue concerning Mr. Messina. He is your client. The simple
10 fact is that, and this raises the issue of my concern relating
11 to the conflict, in part because it may be that these documents
12 are documents that when you look at them, you say, Oh, boy,
13 this might help in Mr. Argentieri's case. But in connection
14 with this case there is a protective order in place, and you're
15 representing Mr. Ceglia and those documents aren't supposed to
16 be used for any other purpose.

17 So one of the rationales, quite frankly, behind my
18 desire to sort of delay their production -- and I'm not saying
19 I would delay it indefinitely -- is to stave off any delay, a
20 delay in connection with any --

21 MR. FOGG: Hello?

22 THE COURT: Go ahead.

23 MR. FOGG: I think we missed you, and right now I
24 can't hear you that well.

25 THE COURT: OK. I will.

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1 MR. MESSINA: I can hear a little bit.

2 THE COURT: What I was saying is, in connection with
3 the request to have the documents produced to the U.S.
4 Attorney's Office, my concern was with the comments that had
5 been made by Mr. Argentieri relating to the subpoena and the
6 potential use of those documents. Rather than have an issue
7 surface when currently the defendant is not in the jurisdiction
8 I thought that temporarily holding off on the production of
9 those documents would make sense. But I will hear from you on
10 that.

11 I know that, Mr. Messina, you just proposed having
12 them produced to the U.S. Attorney's Office and that you could
13 review them there. That might be a solution, but I want to
14 hear some more about that and also about the issue of the use
15 in the end of the day that the documents are going to be put to
16 at this stage, if at this stage Mr. Ceglia really isn't
17 participating in the case.

18 MR. FOGG: Your Honor, if I may address first, only
19 because the larger issue is an issue that Mr. Messina has to
20 address, I believe our concern was with production, period. As
21 you can see through the communications that I have had with the
22 Court, in my election not to get into some hot debate and just
23 simply procedurally go forward, production is an issue. So if
24 the Court would require production and had a designated time
25 and place but not release to the defense team, that would be

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1 fine.

2 THE COURT: OK.

3 MR. FOGG: At least the comfort would be that
4 production was made. If the Court were to accommodate us as
5 far as review, but not to retain, possess, copy, duplicate, but
6 just review, that would be great for us as well. At least we
7 will have a mindset as far as a strategy going forward, and
8 that will be fine, until the Court could decide release of the
9 production to us.

10 With regard to Mr. Argentieri, I don't represent
11 Mr. Argentieri nor any other person nor any other related case.
12 As I've already said, my interest and my representation falls
13 squarely and only upon Mr. Ceglia and in this case as it rests.

14 I do believe that the protective order would satisfy,
15 and that's the reason we are happy to sign it, and my intention
16 is, no, Mr. Argentieri would not be receiving any information
17 with regard to that. And, no, this information would not be
18 used in any other case unless we followed the procedures in the
19 protective order and sought permission, but I have no interest
20 in using these documents past where we are.

21 With regard to Mr. Argentieri's press release or the
22 news, I did review that. Breaking that down, what I did see
23 was that most of it was based upon the public information. The
24 public came to him, and they actually tried to reach out to me
25 as well with regard to this Court's ruling. I haven't spoken

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1 to them with regard to that, but most of it was based on that
2 and on some past statements.

3 However, he did make a current statement, and that
4 current statement was basically the obvious, that
5 Mr. Zuckerberg and Facebook have never been ordered to produce
6 any documents in any case, and that is true, and that's
7 something that I have placed in my motions, in my papers, and
8 that was the basis for my request.

9 But he did make some statements that the two cases are
10 on parallel tracks, which to tell you the truth, Judge, anybody
11 can see that. That is truly the case. I didn't see where he
12 would receive any documents, and I don't believe he made that
13 statement. That is something that Mr. Messina and I have
14 spoken about, and we have vowed to each other, to the case and
15 the protective order, not to allow that to happen at all.

16 I will defer to Mr. Messina.

17 THE COURT: OK. Just to clarify.

18 MR. MESSINA: Well, I agree with everything Mr. Fogg
19 just said.

20 I did speak to Mr. Argentieri when that article came
21 to my attention. It was not anything that we were aware of.
22 It was inaccurate to this extent: There is a comment in there
23 that is attributable to him as being part of the defense team
24 in the criminal case. He said that that is not what he told
25 the reporter. In fact, he told the reporter that he was not

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1 part of the defense team.

2 It is certainly not my intention to share any
3 documents that are produced in the criminal case with him
4 except in accordance with whatever the Court would permit or
5 the protective order allows, you know, such as we did with the
6 August 18, 2003 e-mail, which the government agreed we could
7 use in the civil action.

8 One of the things that I was sure to confirm with
9 Mr. Wilson was that when that happened we would be free to
10 share it with any of the other attorneys who were involved in
11 the civil action, and that included Mr. Argentieri. That may
12 have been the genesis for his statements, but I told him that
13 that was certainly not the case. He told me about the
14 correction to the article.

15 As a matter of fact, he asked me if he shouldn't
16 notify the reporter that that was an incorrect statement. I
17 said I don't think that matters now.

18 That's where that is. I will say this, your Honor:
19 In the other civil case where I represent Mr. Argentieri, we
20 have our own discovery going on there. Whatever discovery is
21 produced in that case will be used in the civil case.

22 I have confidence based on where the process is going
23 through that we are going to get what we need in that case. So
24 I don't think there would even be a need to rely upon anything
25 produced in the criminal case if it was pertinent to the civil

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1 case I think it's going to be produced there.

2 THE COURT: I just want to make two points of
3 clarification. Mr. Fogg, you had mentioned that you are not
4 part of the civil case.

5 As I understand it, although you are not part of
6 Mr. Argentieri's case or Mr. Ceglia's case that was dismissed
7 in the Western District, am I correct that you had appeared in
8 connection with the injunction proceeding that was filed in
9 that Court?

10 MR. FOGG: That's correct, Judge. Yes.

11 THE COURT: I'm sorry, Ms. Echenberg, did you want to
12 say something?

13 MS. ECHENBERG: Yes. Maybe you're getting to this,
14 but I understand that piece is on appeal. So to the extent Mr.
15 Fogg is involved in that, we would like to know.

16 THE COURT: Yes.

17 Mr. Fogg, are you still involved in the injunction
18 proceeding that's currently on appeal?

19 MS. ECHENBERG: Yes, Judge. Just to clarify, when I
20 referred to the civil case, I referred to the initial civil
21 case. My reference was to the initial civil case and to any of
22 the attorneys that had been, I guess that are being prosecuted.
23 That was my reference.

24 THE COURT: OK.

25 MS. ECHENBERG: Just to be clear, it is my

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1 understanding that all of those cases have been joined into a
2 single appeal to the Second Circuit.

3 THE COURT: Mr. Fogg, Mr. Messina, have those cases
4 been consolidated for purposes of the appeal, and are they
5 going to be heard together?

6 MR. MESSINA: Your Honor, the cases have been ordered
7 to be argued in tandem. So they have not been consolidated,
8 but they will be heard together.

9 THE COURT: So any hearing or oral argument will occur
10 on the same day, is that correct?

11 MR. MESSINA: That's correct. April 16, your Honor.

12 THE COURT: OK.

13 A question I have, I don't know what the answer is
14 quite frankly, I know that Mr. Fogg, Mr. Messina, you had filed
15 an appeal in connection with my decision related to the First
16 Amendment claim with regard to the use of materials in
17 connection with the antitrust. I apologize --

18 MS. ECHENBERG: The *Noerr-Pennington* doctrine.

19 THE COURT: The *Noerr-Pennington* doctrine. Thank you.

20 I don't know what the impact is, if any, of the fact
21 that your client has absented himself from this case. I don't
22 know whether that impacts the appeal or not.

23 Quite frankly, I don't need to know that. My
24 intention was, and we are going to proceed as far as we can on
25 this case within the bounds of the law in light of the fact

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1 that the defendant is not present.

2 Let me ask this of the government: Does the
3 government have any objection were I to direct that Facebook
4 produce the documents to the U.S. Attorney's Office, so that
5 the U.S. Attorney's' Office can review them and they can
6 arrange times when Mr. Messina and Mr. Fogg might be able to
7 review these documents.

8 MS. ECHENBERG: Your Honor, in light of the potential
9 conflict issue with Mr. Argentieri, it may make sense for us to
10 give you our view on this, and then to bring this issue up
11 again after we have addressed that.

12 THE COURT: OK.

13 MS. ECHENBERG: I also would note there had been some
14 discussion of a phone conference tomorrow that would have
15 involved Facebook. That is not happening, as I understand it.

16 THE COURT: That will not happen, yes.

17 MS. ECHENBERG: Although they, too, may want to weigh
18 in on this particular issue.

19 THE COURT: Sure.

20 In one of their letters they reference something about
21 Mr. Argentieri. That is fair. I will hear from the parties in
22 writing, from the government in writing on Monday. I am not
23 sure exactly what Facebook's standing would be with regard to
24 Mr. Argentieri's potentially being a witness here if Facebook
25 signs off on the protective order, but I will have to think

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1 about that. I will reserve any decision about the production
2 of the documents, but I will issue an order indicating that
3 production will be held in abeyance until such time as I issue
4 a further order.

5 Now I would like to discuss -- and this is an issue of
6 timing, and again I don't want to talk about the substance of
7 the crime fraud exception or the specific documents that I have
8 reviewed, but let me ask this question: Mr. Fogg and
9 Mr. Messina, it sounds as if the answer to this is no in light
10 of the timing of your last contact with Mr. Ceglia, without
11 disclosing the substance, have you had an opportunity to
12 discuss with him the issue about the documents that might be
13 subject to the crime fraud exception.

14 By documents I am actually referring more to sort of
15 specific documents. Again, Mr. Fogg, Mr. Messina, do not
16 reference any substantive documents or ruling that I may have
17 made in connection with those documents. I just want to know
18 if you are in a position to provide me with your thoughts on
19 specific documents that might be subject to the crime fraud
20 exception.

21 MR. MESSINA: Your Honor, the answer to that is yes.
22 I believe I can provide you with our position.

23 THE COURT: OK.

24 MR. MESSINA: The answer to your first question is
25 that, no, although we have done the review of the more limited

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1 production that was submitted for your Honor's in camera
2 review, I have not discussed with and did not have an
3 opportunity to discuss with Mr. Ceglia the details of those
4 documents except to the extent that they already have been
5 known to us and we have had discussions about them in different
6 contexts, but not in the context of the crime fraud exception.

7 THE COURT: OK. Let me hear from the government.

8 Mr. Velamoor, I had indicated that I would like to get
9 something from the parties by Monday. It sounds as if Mr. Fogg
10 and Mr. Messina intend on providing me with something. Whether
11 I rule finally on those issues or not I will have to think
12 about, but I will hear from the government about whether or not
13 they are in a position to provide me with any objections that
14 they might have.

15 MR. VELAMOOR: Yes, your Honor. We are in a position
16 to provide objections. I don't expect there to be very many.
17 If we submit a letter, it will be brief.

18 THE COURT: OK.

19 MR. VELAMOOR: I am addressing a few documents at the
20 most.

21 Just as a matter of commentary, I did note earlier,
22 the Court pointed out that it may be OK to proceed on narrow
23 legal questions. I think, without going into the substance of
24 the order or the documents themselves, I think the Court has
25 set forth a very limited analysis at this point. The Court's

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1 made it clear what we are not supposed to argue in terms of the
2 general issues about the application of the crime fraud. It's
3 really now a matter of applying the principles that the Court
4 has outlined in that order to very specific documents.

5 It seems to me, and I will let perhaps have to do some
6 more research to be sure, but it seems to me that that ought to
7 be something that could go forward even in this context. I
8 would note also that at this point the only people now who have
9 not had an opportunity to see or learn the substance of these
10 documents are the AUSAs who are responsible for prosecuting the
11 case.

12 THE COURT: That's right.

13 MR. VELAMMOOR: So to the extent the trial date goes
14 forward, and I think everyone hopes that it does, for them to
15 have the opportunity and do any follow-up work that may be
16 appropriate, that is another interest I think going forward, as
17 quickly as possible.

18 THE COURT: Mr. Velamoor, Mr. Messina, Mr. Fogg, I
19 look forward to getting your submissions on Monday with regard
20 to those specific documents.

21 MR. MESSINA: Your Honor?

22 THE COURT: Yes.

23 MR. MESSINA: I hate to do this, but I'm in the
24 process of traveling with my family now and I actually won't be
25 back to my office where those documents are until -- I will be

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1 back in the office on Tuesday. Would it be possible to move
2 that to Tuesday? I don't want to delay things.

3 THE COURT: That's fine. Thursday, Mrs. Williams is?

4 THE DEPUTY CLERK: March 19.

5 THE COURT: March 19 I'll get the letters from the
6 parties. Again, Mr. Fogg, Mr. Messina, Mr. Velamoor, obviously
7 those letters are just to come to me. Don't copy members of
8 the prosecution team, OK?

9 MR. FOGG: I understand, your Honor.

10 MR. MESSINA: Yes, your Honor.

11 THE COURT: OK.

12 MR. FOGG: Your Honor, one last thing. I just wanted
13 to be clear, the last communication I had with Mr. Ceglia was
14 last week. I do believe what I did was I forwarded the Court's
15 order to him, and that was within the last week, also based on
16 Mr. Zuckerberg's and Facebook's comments with regard to
17 Mr. Argentieri's article. That was it.

18 THE COURT: OK.

19 So, in connection with the revocation of Mr. Ceglia's
20 bail, I will schedule a --

21 MS. ECHENBERG: Your Honor?

22 THE COURT: Yes.

23 MS. ECHENBERG: Just so we can have a better sense of
24 timing, what order is he referring to that he forwarded to
25 Mr. Ceglia?

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1 Is it the order regarding the crime fraud?

2 THE COURT: Well, let me ask.

3 MS. ECHENBERG: Also, if he can clarify whether he got
4 any response from Mr. Ceglia or whether it was merely that he
5 had reached out.

6 THE COURT: OK.

7 MR. FOGG: The order was document No. 143, Judge. I
8 have also sent out e-mails with regard to his appearance today.

9 THE COURT: Oh.

10 MR. FOGG: I had not received a notice back on whether
11 he's received them or reviewed them.

12 THE COURT: 143 relates to Mr. Argentieri and the
13 potential conflict and the Curcio-related issues.

14 So, in connection with the revocation of Mr. Ceglia's
15 bail, I will order a hearing in two weeks, on March 24.

16 Mrs. Williams?

17 THE DEPUTY CLERK: 10 a.m.

18 THE COURT: At 10 a.m. with regard to the properties
19 that are part of the security for Mr. Ceglia's bail, for his
20 bond I should say.

21 OK. Yes?

22 MS. ECHENBERG: Your Honor, is that hearing also with
23 regard to the cosigners.

24 THE COURT: Yes. I'm sorry. The hearing is with
25 regard to the property and the cosigners who signed for

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1 Mr. Ceglia's bond who I understand is his brother, Brendan?

2 His father I believe?

3 MS. ECHENBERG: His father, Carmine Ceglia, and his
4 mother, Veronica Ceglia.

5 THE COURT: OK. So that hearing is scheduled for
6 March 24 at 10 a.m.

7 MR. FOGG: Judge, will our appearance, Mr. Messina and
8 I, permitted to be telephonically.

9 THE COURT: It relates to the criminal case. It's
10 specifically, though, related to the bond. You're welcome to
11 participate. You're welcome to listen in if you like. I don't
12 know whether any of the folks -- that is fine. You can
13 participate by phone. That is fine.

14 MR. FOGG: Will there be notice provided to the
15 parents?

16 THE COURT: Yes. I believe --

17 MR. FOGG: Or the interested parties in the
18 properties?

19 THE COURT: Just so that you know, I have signed an
20 order. That order will be provided to the people who have
21 signed the bond, who I believe also are, with the exception of
22 Mr. Ceglia, also the people who have ownership interest in the
23 property as I understand it.

24 MR. FOGG: Yes.

25 THE COURT: OK. It will also be something that will

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1 be entered on the docket.

2 So, Mr. Fogg, Mr. Messina, to the extent you are in
3 contact with them, you should feel free to share it with them
4 also if you like. OK?

5 MR. FOGG: Yes, your Honor.

6 THE COURT: OK.

7 Are there any other issues that we need to deal with
8 today?

9 Mr. Fogg, Mr. Messina?

10 MR. FOGG: Nothing that comes to my mind, your Honor.

11 MR. MESSINA: Nor to mine, your Honor.

12 THE COURT: Thank you.

13 Ms. Echenberg?

14 MS. ECHENBERG: Nothing, your Honor.

15 THE COURT: Mr. Velamoor, anything?

16 MR. VELAMOOR: Nothing further, your Honor.

17 THE COURT: Mr. Messina, did you want to say
18 something?

19 MR. MESSINA: Yes, I just wanted to make sure that I
20 have all these dates right. Your Honor will be, I assume,
21 entering a text order with regard to the additional schedule?

22 THE COURT: Yes, either a text order or an actual
23 order. There is already an order prepared which will be up on
24 the docket with regard to the individuals who signed the bond
25 and the properties.

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1 With regard to the other scheduling issues that we
2 have discussed today, the extension until next Thursday for the
3 document-specific objections related to the crime fraud and the
4 other issues that we have discussed, yes. They will be part of
5 an order, either a text order or an actual order that will be
6 on the docket.

7 MR. MESSINA: OK. Great. Thank you very much, your
8 Honor.

9 THE COURT: If there's nothing further -- anything
10 further from anyone?

11 OK. All right. Then we will stand adjourned. Thank
12 you very much for coming in.

13 MS. ECHENBERG: Thank you, your Honor.

14 MR. MESSINA: Thank you, your Honor.

15 MR. FOGG: Thank you, your Honor.

16 (Adjourned)

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